

§ 128.6

[] On the basis of race, color, national origin, religion, sex, marital status, or age;

[] Because income is from public assistance; or

[] Because a right has been exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

[Insert contact information for appropriate Federal regulator]

§ 128.6 Loan application register.

Savings associations and other lenders required to file Home Mortgage Disclosure Act Loan Application Registers with the OCC in accordance with 12 CFR part 203 must enter the reason for denial, using the codes provided in 12 CFR part 203, with respect to all loan denials.

§ 128.7 Nondiscrimination in employment.

(a) No savings association shall, because of an individual's race, color, religion, sex, or national origin:

(1) Fail or refuse to hire such individual;

(2) Discharge such individual;

(3) Otherwise discriminate against such individual with respect to such individual's compensation, promotion, or the terms, conditions, or privileges of such individual's employment; or

(4) Discriminate in admission to, or employment in, any program of apprenticeship, training, or retraining, including on-the-job training.

(b) No savings association shall limit, segregate, or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee because of such individual's race, color, religion, sex, or national origin.

(c) No savings association shall discriminate against any employee or applicant for employment because such employee or applicant has opposed any employment practice made unlawful by Federal, state, or local law or regulation or because he has in good faith made a charge of such practice or testified, assisted, or participated in any

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manner in an investigation, proceeding, or hearing of such practice by any lawfully constituted authority.

(d) No savings association shall print or publish or cause to be printed or published any notice or advertisement relating to employment by such savings association indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin.

(e) This regulation shall not apply in any case in which the Federal Equal Employment Opportunities law is made inapplicable by the provisions of section 2000e–1 or sections 2000e–2(e) through (j) of title 42, United States Code.

(f) Any violation of the following laws or regulations by a savings association shall be deemed to be a violation of this part 128:

(1) The Equal Employment Opportunity Act, as amended, 42 U.S.C. 2000e–2000h–2, and Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR part 1600;

(2) The Age Discrimination in Employment Act, 29 U.S.C. 621–633, and EEOC and Department of Labor regulations;

(3) Office of Federal Contract Compliance Programs (OFCCP) regulations at 41 CFR part 60;

(4) The Veterans Employment and Readjustment Act of 1972, 38 U.S.C. 2011–2012, and the Vietnam Era Veterans Readjustment Adjustment Assistance Act of 1974, 38 U.S.C. 2021–2026;

(5) The Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*; and

(6) The Immigration and Nationality Act, 8 U.S.C. 1324b, and INS regulations at 8 CFR part 274a.

§ 128.8 Complaints.

Complaints alleging violations of the Fair Housing Act by a savings association shall be referred to the Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Washington, DC 20410 for processing under the Fair Housing Act, and to the appropriate Federal regulator for processing under applicable regulations. Complaints regarding discrimination in employment by a savings association

should be referred to the Equal Employment Opportunity Commission, Washington, DC 20506 and a copy, for information only, sent to the appropriate Federal regulator.

§ 128.9 Guidelines relating to non-discrimination in lending.

(a) *General.* Fair housing and equal opportunity in home financing is a policy of the United States established by Federal statutes and Presidential orders and proclamations. In furtherance of the Federal civil rights laws and the economical home financing purposes of the statutes administered by the OCC, the OCC has adopted, in part 128 of this chapter, nondiscrimination regulations that, among other things, prohibit arbitrary refusals to consider loan applications on the basis of the age or location of a dwelling, and prohibit discrimination based on race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract), or national origin in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of housing related loans. Such discrimination is also prohibited in the purchase of loans and securities. This section provides supplementary guidelines to aid savings associations in developing and implementing non-discriminatory lending policies. Each savings association should reexamine its underwriting standards at least annually in order to ensure equal opportunity.

(b) *Loan underwriting standards.* The basic purpose of the nondiscrimination regulations is to require that every applicant be given an equal opportunity to obtain a loan. Each loan applicant's creditworthiness should be evaluated on an individual basis without reference to presumed characteristics of a group. The use of lending standards which have no economic basis and which are discriminatory in effect is a violation of law even in the absence of an actual intent to discriminate. However, a standard which has a discriminatory effect is not necessarily improper if its use achieves a genuine business need which cannot be achieved

by means which are not discriminatory in effect or less discriminatory in effect.

(c) *Discriminatory practices—(1) Discrimination on the basis of sex or marital status.* The Civil Rights Act of 1968 and the National Housing Act prohibit discrimination in lending on the basis of sex. The Equal Credit Opportunity Act, in addition to this prohibition, forbids discrimination on the basis of marital status. Refusing to lend to, requiring higher standards of creditworthiness of, or imposing different requirements on, members of one sex or individuals of one marital status, is discrimination based on sex or marital status. Loan underwriting decisions must be based on an applicant's credit history and present and reasonably foreseeable economic prospects, rather than on the basis of assumptions regarding comparative differences in creditworthiness between married and unmarried individuals, or between men and women.

(2) *Discrimination on the basis of language.* Requiring fluency in the English language as a prerequisite for obtaining a loan may be a discriminatory practice based on national origin.

(3) *Income of husbands and wives.* A practice of discounting all or part of either spouse's income where spouses apply jointly is a violation of section 527 of the National Housing Act. As with other income, when spouses apply jointly for a loan, the determination as to whether a spouse's income qualifies for credit purposes should depend upon a reasonable evaluation of his or her past, present, and reasonably foreseeable economic circumstances. Information relating to child-bearing intentions of a couple or an individual may not be requested.

(4) *Supplementary income.* Lending standards which consider as effective only the non-overtime income of the primary wage-earner may result in discrimination because they do not take account of variations in employment patterns among individuals and families. The favored method of loan underwriting reasonably evaluates the creditworthiness of each applicant based on a realistic appraisal of his or her own past, present, and foreseeable economic circumstances. The determination as